

**APPENDIX A**

**TO**

**FINAL MODIFICATION OF**  
**1994 CONSENT DECREE WITH ASARCO**



ENTERED  
08/28/2007

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

**In re:**

**ASARCO LLC, *et al.*,**

§  
§  
§  
§

**Case No. 05-21207-C-11**

**Debtors.**

**ORDER APPROVING COMPROMISE AND SETTLEMENT  
REGARDING THE CALIFORNIA GULCH SUPERFUND SITE (OTHER THAN  
FUTURE RESPONSE COSTS AND FUTURE LIABILITIES AT OPERABLE UNIT 9),  
THE RES-ASARCO JOINT VENTURE AND THE BLACK CLOUD MINE**

On this day came on for consideration the Motion to Approve Compromise and Settlement Regarding the California Gulch Superfund Site (Other than Future Response Costs and Future Liabilities at Operable Unit 9), the Res-ASARCO Joint Venture and the Black Cloud Mine (the "Motion"); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided as set forth in the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtor and its estate and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, based on the Findings of Fact and Conclusions of Law entered contemporaneously herewith, it is

**ORDERED** that the compromise and settlement among ASARCO, LLC ("ASARCO"), the United States of America, the Colorado Department of Public Health and the Environment, the Mined Land Reclamation Board and the Division of Reclamation, Mining and Safety f/k/a the Colorado Department of Natural Resources, Division of Minerals and Geology, the Colorado Natural Resources Trustees, Resurrection Mining Company and Newmont (USA), Ltd. f/k/a Newmont Mining Corporation, as described in greater detail in the Motion, is approved pursuant to Bankruptcy Rule 9019; and it is further

**ORDERED** that ASARCO is authorized to enter into and implement the settlements upon obtaining the further approvals required by the United States District Court for the District of Colorado; and it is further

**ORDERED** that the terms of the settlement agreements shall control over any contrary statements in the Motion or the arguments before the Court; and it is further

**ORDERED** that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order other than those matters that will be presented to the United States District Court for the District of Colorado.

At Corpus Christi, Texas this 28<sup>th</sup> day of August, 2007.

**RICHARD S. SCHMIDT**  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

In re:	)	
	)	Case No. 05-21207
ASARCO LLC, et al.	)	Chapter 11
	)	
<u>Debtors.</u>	)	

**SETTLEMENT AGREEMENT REGARDING THE  
CALIFORNIA GULCH SUPERFUND SITE AND BLACK CLOUD MINE**

**WHEREAS**, the United States Environmental Protection Agency ("EPA") pursuant to its authority under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9675 ("CERCLA"), added the California Gulch Superfund Site (the "Site") to the National Priority List on September 8, 1983;

**WHEREAS**, EPA has alleged that ASARCO, LLC, formerly known as ASARCO Incorporated ("ASARCO" or the "Debtor"), is a potentially responsible party with respect to the Site;

**WHEREAS**, EPA issued Unilateral Administrative Order ("UAO") No. CERCLA VIII 88-11 on July 25, 1988 and UAO No. CERCLA VIII 89-20 on March 19, 1989 to ASARCO, Resurrection Mining Co. ("Resurrection"), Newmont Mining Corporation ("Newmont") and the Res-ASARCO Joint Venture (the "Joint Venture") (collectively the "Yak Tunnel UAOs") requiring them to perform certain work in connection with Operable Unit ("OU") 1 at the Site, including the construction, operation and maintenance of a surge pond and water treatment plant in the portal of the Yak Tunnel to treat all Tunnel effluent before its release into California Gulch;

**WHEREAS**, ASARCO, Resurrection, Newmont and the Joint Venture negotiated a Consent Decree with the United States and the State of Colorado (the “State”) which was entered by the U.S. District Court for the District of Colorado on August 26, 1994 in the consolidated actions *State of Colorado v. ASARCO Incorporated, et al*, Civ. Action No. 83-C-2388, and *United States v. Apache Energy and Minerals Co., et al.*, Civ. Action No. 86-C-1675 (the “Leadville Consent Decree”), pursuant to which ASARCO agreed to undertake remediation work at OUs 5, 7 and 9 at the Site;

**WHEREAS**, some of the work required under the Leadville Consent Decree with respect to OUs 5, 7 and 9 has been completed and other work remains to be completed;

**WHEREAS**, ASARCO filed with the United States Bankruptcy Court for the Southern District of Texas a voluntary petition for relief under Title 11 of the United States Bankruptcy Code on August 9, 2005 (the “Bankruptcy Case”);

**WHEREAS**, the United States on behalf of EPA and the State each filed Proofs of Claim in the Bankruptcy Case (numbers 8375 and 10746 by the United States and 10408 by the State) setting forth claims against ASARCO under Section 107 of CERCLA for various past and future response costs as defined under CERCLA in connection with OUs 1, 5, 7, 9, 11 and 12;

**WHEREAS**, the trustees for the United States on behalf of the Department of Interior (“DOI”) and the State as defined under CERCLA also filed Proofs of Claim (numbers 8375 and 10745 by the United States and 10408 by the State) setting forth claims against ASARCO under Section 107 of CERCLA for natural resource damages and costs of assessment with respect to releases of hazardous substances at or from the Site;

**WHEREAS**, Resurrection and Newmont also filed Proofs of Claim (numbers 11006 and 18209 by Resurrection, and 11007 and 18210 by Newmont) asserting various claims against ASARCO relating to the Site and the Black Cloud Mine;

**WHEREAS**, in their Proofs of Claim and also in pleadings filed in connection with a proceeding in which the extent of ASARCO's ownership interests in and to portions of the Site have been briefed, the United States, the State, and Resurrection/Newmont have alleged that because of ASARCO's alleged ownership in and to portions of the Site and/or because of certain injunctive orders that ASARCO is subject to, certain of ASARCO's liabilities and obligations with respect to the Site should be declared nondischargable or be treated as an expense of administration in the Bankruptcy case;

**WHEREAS**, the State through the Mined Land Reclamation Board (the "Board") and the Division of Reclamation, Mining and Safety (formerly the Division of Minerals and Geology) (the "Division"), filed Proof of Claim No. 10405, asserting claims as to ASARCO's reclamation obligations with respect to the Black Cloud Mine (and noting the reclamation bond posted as security for such obligations) which is located in the vicinity of (but is not included in) the California Gulch Superfund Site;

**WHEREAS**, through pleadings filed in the Bankruptcy Court, the United States and the State have also alleged that ASARCO may be liable through its status or actions as a partner in or manager of the Joint Venture;

**WHEREAS**, ASARCO has disputed the claims with respect to the Site filed by the United States and the State as set forth in the Proofs of Claim and various expert reports submitted by the United States and the State;

**WHEREAS**, the Court established a process for estimating the claims of the United States and the State with respect to the Site, including the use of mediation;

**WHEREAS**, the Court has set a date for a hearing for the purpose of estimating the claims of the United States and the State with respect to the Site;

**WHEREAS**, the parties have entered into a separate settlement agreement concerning the claims and causes of action of the United States and the State with respect to OU9;

**WHEREAS**, having entered into mediation the parties hereto desire to settle, compromise and resolve their disputes without the necessity of an estimation hearing;

**WHEREAS**, this Settlement Agreement is intended to serve as one part of a comprehensive settlement of claims regarding the Site and the Black Cloud Mine involving ASARCO, Resurrection, Newmont, the United States and the State;

**WHEREAS**, agreements between ASARCO and Resurrection and Newmont (the "ASARCO-Resurrection/Newmont Settlement"), and between Resurrection and Newmont and the United States and the State (the "Government-Resurrection/Newmont Settlement"), are the subject of separate settlement agreements, with the effectiveness of each settlement agreement (including this Settlement Agreement) contingent on the effectiveness of the other settlement agreements;

**WHEREAS**, under the ASARCO-Resurrection/Newmont Settlement, ASARCO will pay \$10,000,000 to, and provide allowed unsecured claims in favor of, Resurrection/Newmont as its contribution towards work that will be performed by Resurrection/Newmont at the Site and at the Black Cloud Mine as well as to resolve the

Resurrection/Newmont Proofs of Claim and the Debtor will transfer its interests in mine properties in the Leadville, Colorado area to Resurrection or a designee;

**WHEREAS**, in consideration of, and in exchange for, the promises and covenants herein, the parties hereby agree to the terms and provisions of this Settlement Agreement ("Settlement Agreement"); and

**WHEREAS**, this Settlement Agreement is in the public interest and is an appropriate means of resolving this matter.

**NOW, THEREFORE**, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the parties by their attorneys and authorized officials, it is hereby agreed as follows:

#### **I. JURISDICTION**

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334.

#### **II. PARTIES BOUND; SUCCESSION AND ASSIGNMENT**

2. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the parties hereto, their legal successors and assigns, and any trustee, examiner or receiver appointed in the Bankruptcy Case.

#### **III. ALLOWANCE OF CLAIMS**

3. In settlement and satisfaction of all claims and causes of action of the United States and the State with respect to costs of response incurred or to be incurred in connection with the Site (including but not limited to the liabilities and other obligations asserted in the Proofs of Claim and other pleadings filed in the Bankruptcy Court by the United States and the State but excepting claims related to future response costs with



respect to OU9, which are governed by a separate settlement agreement), (a) the United States on behalf of EPA shall have an allowed general unsecured claim in the total amount of \$8,833,000 for past and future response costs, and (b) the State shall have an allowed general unsecured claim in the total amount of \$467,000. Distributions received by EPA shall be deposited in either operable unit specific special accounts at the Site or a Site-wide special account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

4. In settlement and satisfaction of all claims and causes of action of the United States on behalf of DOI and State trustees for natural resource damages and costs of assessment incurred or to be incurred in connection with the Site (including but not limited to any natural resource damages allegedly attributable in whole or in part to releases of hazardous substances from any portion of the Site and any other claims set forth in the Proofs of Claim filed on behalf of the federal and State trustees), (a) the United States on behalf of DOI shall have an allowed general unsecured claim for natural resource damages and assessment costs in the total amount of \$5,000,000, and (b) the State shall have an allowed general unsecured claim for natural resource damages and assessment costs in the total amount of \$5,000,000. Payments and notices of payment shall be sent to the addresses provided by counsel for the United States and the State.

5. All allowed claims under this Settlement Agreement shall not be subordinated to other general unsecured claims pursuant to any provisions of the Bankruptcy Code or other applicable law that may be contended to authorize or provide for subordination of

allowed claims, including without limitation sections 105 and 510 of the Bankruptcy Code.

6. Although the claims granted to the United States herein are described as general unsecured claims, this description is without prejudice to the United States' alleged secured right of set-off against ASARCO's claim for tax refunds and nothing in this Settlement Agreement shall modify or waive such alleged secured claim of set-off.

7. With respect to the allowed unsecured claims set forth in Paragraphs 3 and 4 for the United States on behalf of EPA and DOI, and the State, only the amount of cash received by each such agency (and net cash received by each such agency on account of any non-cash distributions) under this Settlement Agreement for the allowed general unsecured claims and not the total amount of the allowed claims, shall be credited by each such agency to its account for a particular site, which credit shall reduce the liability to such agency of non-settling potentially responsible parties for the particular site by the amount of the credit.

#### **IV. OUTSTANDING ORDERS**

8. ASARCO will implement remedial work scheduled at OU5 for 2007 pursuant to the Leadville Consent Decree using \$600,000 from the National Environmental Trust. In all other respects, all obligations of ASARCO to perform work under the Yak Tunnel UAOs, the 1994 Leadville Consent Decree or any other outstanding UAO, Administrative Order on Consent or Consent Decree relating to the Site shall be discharged and such UAOs, Administrative Orders on Consent or Consent Decrees shall be modified or otherwise conformed to the terms of this Settlement Agreement.

#### **V. BLACK CLOUD MINE**

9. Pursuant to the ASARCO-Resurrection/Newmont Settlement, (a) ASARCO will quitclaim all title that it has in and to the Black Cloud Mine to Resurrection, (b) Resurrection will undertake the outstanding reclamation obligations associated with the Black Cloud Mine and will post adequate security therefore, (c) at least 30 days prior to the proposed transfer date, ASARCO and Resurrection will submit to the State a permit transfer form transferring to Resurrection Colorado Discharge Permit System Permit No. CO-0000591, for discharges from the Black Cloud Mine and Mill to Iowa Gulch, and (d) the State will confirm the transfer of Permit No. CO-0000591 to Resurrection.

10. Pursuant to this Settlement Agreement and the Government-Resurrection/Newmont Settlement, Resurrection and Newmont shall perform reclamation according to the approved reclamation plan at the Black Cloud Mine. Resurrection and Newmont agree to undertake and complete reclamation provided the total cost of reclamation does not exceed 110% of the estimated cost of reclamation. The Division's current estimated cost of reclamation is \$5,000,000. Resurrection and Newmont shall provide financial assurance to the Board and Division in the total amount of 110% of the estimated reclamation costs (based on the current estimate the bond amount would be \$5,500,000) in a form acceptable to the Board and Division. Once the financial assurance from Resurrection and Newmont is accepted by the Board and Division, the Board and Division agree that ASARCO's liability as to the Black Cloud Mine will be fully discharged and satisfied. The Board and Division covenant not to sue or assert any civil claims or causes of action against ASARCO with respect to reclamation of the Black Cloud Mine.

## **VI. COVENANTS NOT TO SUE**

11. With respect to the Site (including releases of hazardous substances from any portion of the Site) and except as specifically provided in Section VII (Reservation of Rights), the United States and the State covenant not to sue or assert any civil claims or causes of action against ASARCO pursuant to Sections 106, 107(a) or 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and 9613; Section 7003 of RCRA, 42 U.S.C. § 6973; any similar state law; or any liabilities or obligations asserted in their Proofs of Claim. With respect to ASARCO's past operation of the Yak Tunnel water treatment plant, the United States and the State further covenant not to sue or assert any civil claims or causes of action against ASARCO under the Clean Water Act, 42 U.S.C. § 1251 *et seq.*; any similar state law; or any liabilities or obligations asserted in their Proofs of Claim. The United States and the State further covenant not to sue or assert any civil claims or causes of action against ASARCO pursuant to Sections 106, 107(a) or 113 of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613, Section 7003 of RCRA, 42 U.S.C. § 6973, or the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, or any similar state law with respect to the Black Cloud Mine to the extent such claims or causes of action are raised in the Proofs of Claim or pleadings filed with the Bankruptcy Court, and for purposes of this Settlement Agreement such covenants not to sue or assert any civil claims or causes of action shall include the 500-year flood plain of Iowa Gulch between the Black Cloud Mine tailing impoundment to the confluence of the Arkansas River.

12. This Settlement Agreement in no way impairs the scope and effect of the Debtor's discharge under Section 1141 of the Bankruptcy Code as to any third parties or as to any claims that are not addressed by this Settlement Agreement.

13. Without in any way limiting the covenant not to sue (and the reservations thereto) set forth in Paragraph 11 and notwithstanding any other provision of this Settlement Agreement, such covenant not to sue shall also apply to ASARCO's successors and assigns, officers, directors, employees, and trustees, but only to the extent that the alleged liability of the successor or assign, officer, director, employee, or trustee of ASARCO is based solely on its status as and in its capacity as a successor or assign, officer, director, employee, or trustee of ASARCO.

14. The covenants not to sue contained in Paragraphs 10, 11 and 13 of this Settlement Agreement extend only to ASARCO and the persons described in Paragraphs 11 and 13 above and do not extend to any other person. Nothing in this Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than ASARCO, the United States, the State and the persons described in Paragraph 13. The United States, the State and ASARCO expressly reserve all claims, demands, and causes of action either judicial or administrative, past, present or future, in law or equity, which the United States, the State or ASARCO may have against all other persons, firms, corporations, entities, or predecessors of ASARCO for any matter arising at or relating in any manner to the sites or claims addressed herein.

15. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to that authority. Nothing in this Settlement Agreement shall be deemed to limit the information gathering authority of the United States under Sections 104 and 122 of CERCLA, 42

U.S.C. §§ 9604 and 9622, or any other applicable federal law or regulation, or to excuse the Debtor from any disclosure or notification requirements imposed by CERCLA, RCRA, or any other applicable federal law or regulation.

16. Debtor covenants not to sue and agrees not to assert any claims or causes of action against the United States and the State with respect to the California Gulch Superfund Site and the Black Cloud Mine, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, 9613, or any other provision of law; any claims against the United States and the State, including any of their departments, agencies or instrumentalities, under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613; and any claims arising out of response activities at the California Gulch Superfund Site. Debtor and Resurrection will cause the Joint Venture, to the extent such an entity exists, to covenant not to sue and agree not to assert any claims or causes of action against the United States and the State with respect to the Site and the Black Cloud Mine. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

## **VII. RESERVATION OF RIGHTS**

17. The covenants not to sue set forth in Section VI do not pertain to any matters other than those expressly specified therein. The United States and the State reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtor or other person with respect to all other matters, including but not limited to any action to enforce the terms of this Settlement Agreement.

18. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

## **VIII. CONTRIBUTION PROTECTION**

19. The parties hereto agree that, as of the Effective Date, ASARCO is entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) for matters addressed in this Settlement Agreement. The matters addressed in this Settlement Agreement include all past and future costs of response and all claims for natural resource damages and past and future costs of assessment with respect to the Site.

## **XI. JUDICIAL APPROVAL**

20. The settlement reflected in this Settlement Agreement shall be subject to approval by the Bankruptcy Court pursuant to Bankruptcy Rule 9019 and, after public comment, by the U.S. District Court for the District of Colorado (the "Colorado District Court"). The Debtor shall move promptly for court approval of this Settlement Agreement and shall exercise commercially reasonable efforts to obtain such approval.

21. The effectiveness of this Settlement Agreement is contingent on the approvals required by paragraph 20. The effectiveness of this Settlement Agreement is also

contingent upon the effectiveness of the Government-Resurrection/Newmont Settlement and on the effectiveness of the ASARCO-Resurrection/Newmont Settlement. If any of these contingencies are not satisfied, this Settlement Agreement shall be null and void and of no further effect.

#### **X. RETENTION OF JURISDICTION**

22. This Court shall retain jurisdiction over both the subject matter of this Settlement Agreement and the parties hereto, for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply to the Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement, or to effectuate or enforce compliance with its terms.

#### **XI. EFFECTIVE DATE**

23. The Effective Date of this Settlement Agreement shall be the date upon which the last contingency in Paragraph 21 is satisfied.

#### **XII. SIGNATORIES/SERVICE**

24. The signatories for the parties each certify that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally such Party to this document.



THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT  
FOR THE UNITED STATES

Date: July 17, 2007

Ronald J. Tenpas  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice

Date: July 17, 2007

Alan S. Tenenbaum  
David L. Dain  
Jerel ("Jerry") L. Ellington  
Mark C. Elmer  
Environment and Natural Resources  
Division  
Environmental Enforcement Section  
U.S. Department of Justice

Date: July 17, 2007

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Carol Rushin  
Assistant Regional Administrator  
Office of Ecosystems Protection &  
Remediation  
U.S. EPA, Region 8

Date: July 17, 2007

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Michael T. Risner  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice  
U.S. EPA, Region 8

FOR THE STATE OF COLORADO

Date: \_\_\_\_\_

By: \_\_\_\_\_  
John W. Suthers, Colorado  
Attorney General, as State  
Natural Resource Trustee

Date: \_\_\_\_\_

By: \_\_\_\_\_  
James B. Martin, Executive  
Director of Colorado  
Department of Public Health  
and Environment for Colorado  
Hazardous Waste and Materials  
Management Division and  
Water Quality Control Division  
and as State Natural Resource  
Trustee.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chair, Colorado Mined Land  
Reclamation Board

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Ronald W. Cattany, Division  
Director, for the Colorado  
Division of Reclamation,  
Mining and Safety (formerly  
Colorado Division of Minerals  
and Geology) and as State  
Natural Resource Trustee

**FOR ASARCO:**

Date: Nov 9, 2007

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Thomas L. Aldrich  
Vice President, Environmental Affairs

Date: Nov. 7, 2007

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John Low  
Vice President, Mining